IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITIOIN NO. 282 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

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Mr. Kedar Kanitkar h/f Mr.G.S. Godbole for the petitioner

Mr.A.K. Suryavanshi for respondent No.1

Mr.S.L. Chincholikar, A.G.P. for respondent 2.

None for respondent 3

CORAM : ANOOP V. MOHTA, J.

DATE : 14.11.2005

. Heard. This is an application for condonation of delay under section 5 of Limitation Act, which was rejected by the Additional District Judge, Solapur. the suit was decreed on 4/5/2001 against the defendant-petitioner. There is no doubt that no written statement was filed

by the petitioner in that suit. After considering the material on the record, including the evidence of the plaintiff the Civil Court has passed a decree.

2. By an impugned order dated 1st October, 2003, the learned Additional District Judge, Solapur rejected the application by observing that' that the present appeal, itself was not maintainable and it was passed in exercise of powers under order 17, rule 2 of C.P.C. as an exparte decree and that there was no material to show that the applicant was suffering from illness, therefore, there was no case made out to condone the delay.

3. There is no dispute on the record that the applicant is aged 81 years in the year 2002. the plaintiff is also aged 80 years. The land in question is of Government Land. The Collector of Solapur have also contested the suit

before the trial Court. Considering the fact that the applicant/petitioner is aged 81 years and he was taking regular treatment of Dr. Mahajan and accordingly material was placed on the record. I am of the view that in the facts and circumstances of the case, delay need to be condoned. The rights and rival contentions between the parties on merit in so far as appeal in question is concerned are kept open, including the issue of maintainability of appeal, as raised and or opposed by the parties.

3. Taking all this into account the present writ petition is allowed to this extent. The impugned order dated 1/10/2003 is quashed and set aside. The Additional District Judge, Solapur to register the appeal. Ad interim granted by this Court on 10th March, 2004 shall continue till the decision of the appeal. Appeal expedited.

(ANOOP V.MOHTA,J.]